

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05CV10216-JLT

CARLOS PINEDA, ET AL.

Plaintiffs

v.

JOSEPH WATTS AND JOSEPH TOOMEY,  
ET AL.

Defendants

**DEFENDANTS' JOSEPH P. TOOMEY AND JOSEPH R. WATTS'**  
**PRE-TRIAL MEMORANDUM**

**1. CONCISE SUMMARY OF THE DEFENDANTS' EXPECTED EVIDENCE**

**A. Factual Overview of the Events of April 28, 2003**

The evidence will demonstrate that neither Sergeant Watts nor Sergeant Toomey violated any of the Plaintiffs' constitutional rights. During the early morning hours of April 28, 2003, Officer William J. Gallagher was patrolling area D-4, Back Bay/South End, when he received a radio call for a shooting at a Mobil gas station. As Officer Gallagher and his partner proceeded to the scene, a radio broadcast reported that the shooting suspects were seen leaving in a white van. Along the way, Gallagher and his partner were stopped by a black female motorist who informed the officers that she had observed a white Honda traveling with a white van and directed them to their location.

Shortly thereafter, Gallagher and his partner located the white Honda and a vehicle pursuit ensued as the white Honda, belonging to Plaintiff Carlos Pineda, eluded Gallagher and other subsequent police vehicles. When the pursuit finally ended at One Shandon Road/Fernoy Heights, the white Honda stopped abruptly in the middle of the road and at least

two of its occupants fled on foot into the Fermoy Heights building.

Police then immediately pursued the two fleeing occupants of the white Honda into the Fermoy Heights building and specifically to Plaintiffs' apartment door. Once at Plaintiffs' apartment, Plaintiff Pineda opened the door and immediately, in unsolicited fashion, inquired as to the location of his white Honda. Pineda was then placed in handcuffs and escorted outside for transport from the location to a Boston Police district location.

Following Pineda's arrest, police obtained the voluntary consent of Pineda's wife to search the apartment. Police then located another male, Norberto Serrano, hiding unclothed behind a door in the apartment's back bedroom and transported him from the scene. During this time, police also conducted a necessary protective sweep of the apartment to ensure that no weapons connected to the shooting were present.

**B. Defendants Toomey's and Watts' Limited Involvement During April 28, 2003**

Additionally, Defendants Toomey and Watts expect that the evidence will establish that they had no involvement in Plaintiff Pineda's April 28, 2003 arrest or in the sweep/search of Plaintiffs' apartment. In fact, Plaintiffs Pineda and Perez cannot identify either Defendant as Pineda's arresting officer nor can they even identify or recognize them as an officer participating in the events of that evening. Moreover, at no point did either Defendant even see Pineda or become aware that Pineda had been arrested. Both have no knowledge of Pineda being in handcuffs.

When Sgt. Toomey and Watts arrived at Plaintiffs' apartment, officers from many other districts and another supervisor had already taken control of the scene. In fact, this supervisor (not Sergeant Watts nor Sergeant Toomey) who had taken control of the scene at Plaintiffs' apartment had been heard earlier on the police radio during the pursuit of the white Honda

Civic. Multiple other sergeants from other police districts were also present at Plaintiffs' apartment prior to Sgt. Toomey's arrival. The evidence will further establish that neither Defendant Toomey participated in or otherwise directed the protective sweep/search of Plaintiffs' apartment.

**2. FACTS ESTABLISHED BY THE PLEADINGS, BY STIPULATIONS OR ADMISSIONS OF COUNSEL**

Presently, Defendants Watts and Toomey's Motions for Summary Judgment are currently pending with the Court. All other defendants have been dismissed.

**3. CONTESTED ISSUES OF FACT**

While Plaintiffs make references to numerous immaterial facts, no genuine issues of material fact are in dispute. See Defs. Mot. For Sum. Judgt.

**4. JURISDICTIONAL QUESTIONS**

None.

**5. QUESTIONS RAISED BY PENDING MOTIONS**

The following motion has been submitted by the Defendants:

1. Whether Defendants Watts and Toomey Are Entitled to Summary Judgment Because There Is No Genuine Issue Of Material Fact With Respect To Plaintiff's Fourth Amendment Constitutional Claims?

**6. ISSUES OF LAW**

1. Whether Plaintiff Pineda's April 28, 2003 arrest was supported by probable cause?
2. Whether any protective sweep/search of Plaintiffs' apartment on April 28, 2003 fell outside the purview of the Fourth Amendment?
3. Whether Defendant Watts' or Toomey's conduct was sufficiently indifferent to the constitutional rights of the Plaintiff, and affirmatively linked to any misconduct of subordinate officers, such as would support supervisory liability pursuant to 42 U.S.C. Section 1983 and the MCRA?
4. Whether Defendants Watts and Toomey are entitled to qualified immunity on Plaintiffs' constitutional claims?



**7. REQUESTED AMENDMENTS TO THE PLEADINGS**

Defendants request that the names of the dismissed defendants be removed from all pleading captions filed herewith.

**8. ADDITIONAL MATTERS IN AID OF DISPOSITION**

None.

**9. PROBABLE LENGTH OF TRIAL**

The Defendants estimate 3-4 days.

**10. NAMES AND ADDRESSES OF DEFENDANTS' WITNESSES AND TIME NEEDED**

All of the witnesses listed below are employees of the Boston Police Department, located at One Schroeder Plaza, Boston, MA 02120, and at 617-343-4500:

- |           |                                      |   |
|-----------|--------------------------------------|---|
| <b>1.</b> | <b>Sgt Joseph Toomey - Defendant</b> | <b>Examination Time: Approx. 45 minutes</b> |
| <b>2.</b> | <b>Sgt Joseph Watts - Defendant</b>  | <b>Examination Time: Approx. 45 minutes</b> |
| <b>3.</b> | <b>Officer James Coyne</b>           | <b>Examination Time: Approx. 30 minutes</b> |
| <b>4.</b> | <b>Officer William Gallagher</b>     | <b>Examination Time: Approx. 60 minutes</b> |
| <b>5.</b> | <b>Detective Dennis Harris</b>       | <b>Examination Time: Approx. 30 minutes</b> |

Defendants reserve the right to call additional witnesses for purposes of rebuttal, to call any of the witnesses listed herein by the Plaintiff in their case in chief, and to make timely supplements to this listing.

**11. DEFENDANTS' PROPOSED EXHIBITS**

1. Boston Police Dispatch tape, dated April 28, 2003

Defendants object to the majority of Plaintiffs' proposed exhibits and accordingly have submitted several motions in limine. Additionally, Defendants reserve the right to make a timely supplement to this list.

**12. MOTIONS IN LIMINE**

1. Motion in Limine to Exclude Any and All References to Boston Police Department's Internal Affairs Investigation and Report of the April 28, 2003 Incident
2. Motion in Limine To Exclude Irrelevant and Highly Prejudicial "Other Acts" Evidence Unrelated To The April 28, 2003 Incident
3. Motion In Limine to Exclude All References to Boston Police Department, Rule 102, § 6 of the Rules and Procedures of the Boston Police
4. Motion in Limine To Preclude Irrelevant and Unnecessary Plaintiff Witnesses
5. Motion in Limine to Exclude Certain Documentary Evidence, Including Any Medical/Psychological Reports Regarding Plaintiffs' child, Plaintiff's Photographs, And all Boston Police Reports and FIOs
6. Motion in Limine to Exclude Exclude Irrelevant and Untelevised News Footage Of Plaintiff's Arrest
7. Motion In Limine Requesting Jury Instruction Regarding Probable Cause And Supervisory Liability Prior to Opening Statements

Defendants reserve their right to supplement this answer.

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on July 16, 2007.

Helen G. Litsas

Helen G. Litsas

/s/

Respectfully submitted,  
DEFENDANTS JOSEPH WATTS AND JOSEPH TOOMEY,  
By their attorneys:

/s/ Helen G. Litsas

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Dated: July 16, 2007